

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1895

IN THE MATTER OF:

Served September 29, 1978

Application of SUGGS TRANSPORTATION)
SERVICE, INC., for Temporary Author-)
ity to Perform Charter Operations)
Pursuant to Contract - Department of)
Agriculture, Science and Education)
Administration)

Case No. AP-78-37

By application filed September 18, 1978, Suggs Transportation Service, Inc. (Suggs), seeks temporary authority to transport passengers, and mail, express and baggage in the same vehicles with passengers, in charter operations pursuant to contract with the United States Department of Agriculture, Science and Education Administration (USDA), between USDA facilities at Route 1, Beltsville, Md., and 12th Street and Independence Avenue, S. W., Washington, D. C. Applicant proposes to provide eight scheduled shuttle trips daily in each direction using two 1979 Ford vans seating 12 passengers each, including the driver. The price for this service would be \$96 a day according to Suggs.

In support of the application USDA states that the operation has been performed by federal employees, but this service is going to be stopped September 30, 1978. USDA contacted the Small Business Administration (SBA), was given the names of three companies eligible under the "8A" program, and found that Suggs best met USDA requirements. It further avers that there is an urgent need to implement the shuttle service to prevent impairment of USDA operations.

The application is opposed by Beltway Limousine Service, Inc. (Beltway), which is authorized by the Commission to engage in operations between the south termini. Beltway asserts that it is able to meet the requirements of USDA and that, accordingly, there can be no award of temporary authority under the terms of the Compact.

In reply, Suggs contends that the contract has been negotiated through the SBA and awarded to a firm certified under SBA's "8A" program, whereas Beltway is not qualified under the "8A" program and is thus unable to provide the transportation service for USDA.

The Compact, Title II, Article XII, Section 4(d)(3) mandates that

To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service.

The evidence of record indicates that USDA has an immediate need for the service delineated above. The normal response would be that Beltway holds appropriate authority to provide the proposed service under its certificate of public convenience and necessity and that it is ready, willing and able to serve USDA. However, the question remains as to whether Beltway is excluded from providing the requested transportation service, inasmuch as it is not a carrier certified under the "8A" program.

As relevant, 15 U.S.C. 631(a) provides that

It is the declared policy of the Congress that the Government should aid, counsel, assist and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government . . . be placed with small-business enterprises . . . and to maintain and strengthen the overall economy of the Nation.

For purposes of the Small Business Act, "a small business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632. The Federal Procurement Regulations adopt this definition (41 C.F.R. Section 1-1.701-1(a)), and further provide that any concern bidding on a contract for passenger transportation is classified as small if its number of employees does not exceed 500 persons (41 C.F.R. Section 1-1.701-1(g)). A review of Beltway's annual report indicates that it qualifies as a small-business concern and, in our view, it is not dominant in its field of operation, i.e., transportation of passengers in vehicles with a seating capacity for 15 passengers or less (41 C.F.R. Section 1-1.701-3). Thus, we can derive no basis for preferential treatment between Suggs and Beltway according to the above criteria.

In furtherance of Executive Order 11625 dated October 13, 1971, 41 C.F.R. Section 1-1.13 contains regulations concerning policies, procedures and contract clauses applicable to the participation of minority business enterprises in government procurement. Section 1-1.1302 requires the establishment of minority business enterprise programs by agencies engaged in procurement activities so as to obtain the maximum practical participation of said enterprises in government procurement. Among the minimum steps to be taken by each agency are the following:

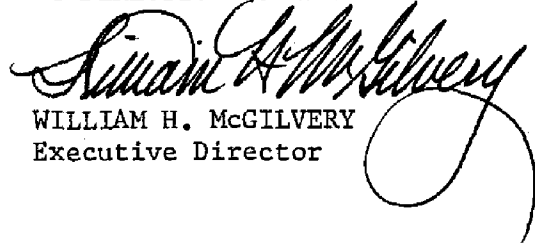
- (1) Seek out minority business enterprises and facilitate the placement of such concerns on the agency's source list;
- (2) Solicit offers from the minority business enterprises on the agency's source lists; and
- (3) Ensure that minority business enterprises will have an equitable opportunity to compete for contracts . . .

While we recognize that promotion of minority business enterprises generally is a desirable national goal, our review of the relevant regulations leads us to believe that their purpose is to accord special treatment to minority business enterprises so that an equitable level of participation in federal procurement may result. We do not find in the regulations or the cited Executive Order any mandate to prefer business enterprises on the sole basis that a small-business concern is owned and controlled by minority persons. The applicable procurement regulations indicate that the preference to minority-operated businesses is discretionary rather than mandatory.

We must, therefore, conclude that Suggs has failed to sustain its burden of proof that there is no carrier capable of providing the proposed service. Where, as here, a certificated carrier can meet the needs of USDA, we are precluded by the Compact, Title II, Article XII, Section 4(d)(3), from granting temporary authority.

THEREFORE, IT IS ORDERED that the above-referenced application of Suggs Transportation Service, Inc., is hereby denied.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director